

PERSUPPACT SAN DIEGO INSTRUCTION 12751.1A

Subj: CONSTRUCTIVE DISCIPLINE

Ref: (a) Civilian Personnel Manual, HRO, FISC, San Diego

1. Purpose. To promulgate policies for implementing constructive discipline within the Personnel Support Activity San Diego Network. This instruction has been revised in its entirety.
2. Cancellation. PERSUPPACTSANDIEGOINST 12751.1
3. Policy. It is the Department of the Navy policy to use discipline as a managerial tool to correct deficiencies in employee conduct and performance and to promote the efficiency of the service by maintaining public confidence in the Department of the Navy. Adverse actions will be taken only for such cause as to promote the efficiency of the service. The Navy does not use disciplinary measures for the sole purpose of punishing employees. An employee whose behavior is unacceptable to management, but whose behavior goes uncorrected, is likely to continue behaving unacceptably in the erroneous belief that the behavior is correct, or at least condoned. Supervisors and managers have an obligation to encourage employees to correct behavioral deficiencies before the behavior becomes habitual and a bad example to others. Chapter 4, subchapter 2, of reference (a) is quoted throughout this entire instruction.
4. Definition. Constructive discipline requires adult-to-adult communication and problem solving. The point is to address the employee's problem, not to address the employee as a problem. In this process, the supervisor focuses the employees' attention on the work-related problem that is created by the unacceptable conduct or behavior. The first consideration in this process is whether or not there is a problem and how to confront an employee whose behavior or conduct is adversely affecting the efficiency of the service. In this regard, it is important to note that supervisory discretion is a key factor. The determination that a problem does or does not exist will be influenced by the individual perspective of the supervisor and manager. Although unique situations will arise which may warrant the employee's removal for a first offense, such as possession of drugs or fighting in the work place, most disciplinary problems can be addressed through the constructive discipline process.
5. Procedures. The specific constructive discipline steps are as follows:
 - a. STEP ONE — ORAL COUNSELING
 - (1) The supervisor and employee informally discuss the conduct problem, given all relevant facts at the supervisor's disposal. This is to be done in private. Union representation is appropriate if requested.
 - (2) The supervisor shall explain what work rule, regulation or procedure was broken and why the rule exists. Previous conversations, notices or reminders about the same or similar infractions are to be discussed.

(3) The employee shall be given the opportunity to explain or justify his/her actions and provide relevant facts. The supervisor must consider the employee's explanation, and if appropriate, address any new problems that surface.

(4) The supervisor then SUGGESTS the corrective steps the employee is to take, including referral to the Civilian Employee Assistance Program (CEAP).

(5) The supervisor then requests that the employee verbally commit to some affirmative action to correct the problem/behavior that the employee and the supervisor agree are reasonable. If the employee refuses to commit to a specific corrective action, the supervisor shall then dictate the specific steps and expectations that the employee will be held accountable for in the future. The employee should confirm that they understand what is expected or what is to be done, even if they do not accept it.

(6) The essence of this conversation is reduced to writing, signed by the supervisor and given to the employee. (HRO personnel are available to assist in the preparation of the document.) This document represents Step 1 of the Constructive Discipline Program and may be grieved through the applicable grievance procedure.

(7) The supervisor then tells the employee that this is an informal action and that the supervisor hopes the employee will fulfill the job responsibilities in the future.

(8) Follow up with the employee to reinforce positive changes. If the same or similar problem recurs after counseling and the supervisor decides the situation must be addressed, he/she must evaluate whether a sufficient period of time has passed (6 months to 1 year, depending on the infraction), to warrant repeating the oral counseling, Step 1. If not, he/she must decide whether to initiate Step 2, 3 or 4.

b. STEP 2 — CONSTRUCTIVE DISCIPLINE ACTION PLAN

(1) The supervisor and employee will formally discuss the conduct problem in private, given all relevant facts at the supervisor's disposal. Union representation is appropriate if requested.

(2) The supervisor shall explain:

(a) What work rule, regulation or procedure was broken;

(b) Why the rule exists; and,

(c) That there was previous counseling, notices or reminders on the same or similar conduct problem.

(3) The employee shall be given the opportunity to explain or justify their actions and to provide relevant facts. The supervisor must consider the employee's explanation before developing a Constructive Discipline Action Plan.

(4) The supervisor shall make reasonable efforts to work with the employee to establish a realistic and reasonable action plan that the employee can follow to eliminate the conduct problem.

(5) The action plan need not be a lengthy brief or contain legal citations, but rather straightforward statements framed in everyday language to address and remedy the situation. As with Step 1 of the process, the essence of the meeting is reduced to writing, identifying the specifics of the infraction, and stating the corrective action committed or required by the employee to eliminate the problem. This letter or memorandum is given to the employee and shall be placed in the employee's OPF for maximum of two years. This step may also be grieved through the applicable grievance procedure. If the employee refuses to work with the supervisor in developing the Action Plan, the supervisor shall develop the Action Plan which will contain the same information, except that the memo need not be signed by the employee. A copy should be forwarded to the PSA, Attn: N01PM.

(6) The supervisor shall tell the employee that this is a formal action and that the supervisor hopes the employee will fulfill his/her job responsibilities in the future. FOLLOW UP WITH THE EMPLOYEE TO REINFORCE POSITIVE CHANGES. If the same or similar problem recurs within the time period established in the action plan developed by the supervisor and the employee, the next step in the process is as follows:

c. STEP 3 — ONE DAY DISCIPLINARY LEAVE WITH PAY

(1) The supervisor should coordinate this step with the Labor/Employee Relations Specialist, before taking any additional action.

(2) As in the previous steps, the supervisor meets with the employee and discusses the circumstances surrounding the latest incident, referencing the preceding steps wherein the employee committed (or was directed) to specify actions to eliminate the problem. Upon listening to the employee's justification for their action, the supervisor informs the employee that they wish to consider his/her response and will get back with them once decision is made. If the employee's explanation or justification is not persuasive, the supervisor should inform PSA Code N01PM, who will draft a Step 3 letter for the supervisor's signature.

(3) Upon receipt of the Step 3 letter, the supervisor will again meet with the employee (and representative, if represented) and advise him/her of their decision to impose Step 3 of the Constructive Discipline Program. The supervisor will then present the employee with the letter and send the employee home for the remainder of the shift with pay to think about their employment situation and whether they wish to remain employed with the agency. The employee is asked to acknowledge and sign the letter, which will be placed in the OPF for a maximum period of 3 years.

d. STEP 4 — SEPARATION. The individual's employment with the agency is terminated per applicable regulations. Contact the Labor/Employee Relations Specialist for further guidance.

6. Definitions

a. Furlough for 30 days or less. The placing of an employee in a temporary status without duties and pay because of a lack of work or funds or other non-disciplinary reasons. NOTE: Furlough in excess of 30 days is handled under reduction-in-force procedures.

b. Letter of admonishment. A supervisor's written correction of an employee's improper conduct.

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c. Letter of caution. A written warning that continued instances or patterns of unacceptable behavior or performance may lead to disciplinary action.

d. Letter of reprimand. A formal written reprimand by a superior official for an employee's improper conduct.

e. Letter of requirement. Used to reinforce an existing policy or procedure or to establish a new requirement not necessarily applied to other employees.

f. Oral admonishment. An oral (non-written) correction by superior official of an employee's improper conduct.

g. Reduction in grade. A reduction to a lower classification grade level.

h. Reduction in Pay. A reduction in the rate of basic pay tied by law or administrative action for the position held by an employee.

i. Removal. The involuntary separation of an employee from the activity, except when taken as a reduction-in-force action.

j. Suspension. The placing of an employee in a temporary status without duties or pay for disciplinary reasons. Suspensions are counted in calendar days.

7. Information

a. Supervisors and managers shall choose the disciplinary action likely to correct improper behavior and promote the efficiency of the Federal Service. Discipline is to be corrective, timely, and equitable.

b. Mitigating, unusual, or aggravating circumstances will be considered in determining a proper disciplinary action. Such factors as the employee's position, length of service, and previous corrective action will be considered.

c. Not all misconduct warrants disciplinary action. Possible alternative courses of action may include:

(1) Civilian Employee Assistance Program (CEAP). Misconduct or poor performance may be caused by alcoholism, drug use, or other personal problems. Referral to the CEAP and successful rehabilitation may preclude the need for disciplinary action.

(2) Training or Explanation. If an employee is unaware of the appropriate performance or conduct, the supervisor should provide training or an explanation to correct the problem.

(3) Voluntary Action by the Employee. An employee who is confronted by management with a potential disciplinary situation sometimes will voluntarily accept a lower grade, a reassignment, or resign in lieu of the disciplinary action. This is acceptable provided management has not coerced the employee into taking such an action.

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8. Non-disciplinary actions. Oral or written admonishments, and letters of caution and requirements are not disciplinary actions and will not be placed in an employee's Official Personnel Folder. They are not counted as prior offenses when determining a remedial action for a future offense, although they may influence the selection of a remedy. Unless provided for by a negotiated agreement, these actions are not grievable. Letters of requirement which impose conditions over and above those placed on other employees are grievable under the administrative grievance procedure (see reference (a) Administrative Procedure subchapter) and may be grievable under the negotiated grievance procedure.

9. Procedures for issuing punitive discipline and adverse actions

a. A letter of reprimand is the least severe, formal disciplinary action under the punitive system. The letter specifies one or more reasons for its issuance, and states the following (1) the employee's right to file a grievance; (2) that it may be counted as a prior offense when determining a disciplinary action for a future offense, and (3) the length of time (one to two years) it will be retained in the employee's OPF.

b. Suspension of 14 Calendar Days or Less. Employees are entitled to:

(1) An advance written notice stating the specific reason for the proposed action, the name and title of the official designated to hear an oral reply and receive a written reply, the amount of time the employee is permitted to respond orally and/or in writing, and the right to review material relied upon to support the reason(s) given in the proposed suspension notice.

(2) A reasonable amount of official time to review the notice and supporting material, to prepare an answer, and to secure affidavits.

(3) At least 24 hours to answer orally and/or in writing and to furnish documentary evidence in support of the answer, including medical documentation related to the alleged misconduct.

(4) Be represented by an attorney or other representative and, if a member of the bargaining unit, entitlement to union representation. Employees have the right to be represented by an individual of their choice. The choice of a representative may be disallowed if it would result in a conflict of interest or position, would result in a conflict with the priority needs of the activity, or would cause an unreasonable cost to the Government. Supervisors and managers no lower than the level of the official designated to make the final written decision are delegated the authority to disallow the choice of an employee's representative. If the employee disagrees with a decision to disallow a choice of representative, an official higher than the one who made the disputed determination shall make the final decision.

(5) A written decision at the earliest practicable date. That decision must specify the reason for the decision, consider any answer of the employee, be signed by an official higher than the one who proposed the suspension, give the employee's right to grieve, and be delivered to the employee on or before the effective date of the suspension.

c. Suspensions of 15 days or more, furloughs of 3 days or less, grade/pay reductions. An employee is entitled to:

(1) At least 30 calendar days advance written notice which states the reason(s) for the proposed action, name and title of the official to hear and receive the employee's reply, the amount of time permitted to respond, and the right to review documents relied upon to support the action.

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(2) A reasonable amount of official time to review the notice and supporting material, to prepare an answer, and to secure affidavits.

(3) At least seven days to answer orally and/or in writing and to furnish affidavits and other documentary evidence (including medical documentation).

(4) Representation by an exclusive representative, attorney, or other representative of the employee's choice. If a member of a bargaining unit, the employee is entitled to union representation. The choice of a representative maybe disallowed if it would result in a conflict of interest or position, would result in a conflict with the priority needs of the activity or would cause an unreasonable cost to the Government. Supervisors and managers no lower than the level of the official designated to make the final written decision are delegated the authority to disallow the choice of an employee's representative. If the employee disagrees with a decision to disallow a choice of representative, an official higher than the one who made the disputed determination shall make the final decision within five working days.

(5) A written decision that specifies the reason for the decision, considers any answer by the employee and the employee's representative, considers any medical or other documentation, is signed by an official in a higher position than the supervisor who proposed the action, specifies the employee's right to appeal to the Merit Systems Protection Board (MSPB) or file a grievance, and is delivered to the employee on or before the effective date of the action. The written decision shall provide the time limit and address for filing an appeal to the MSPB, a copy of the MSPB regulations, a copy of the MSPB appeal form, and the time limit for filing a grievance under the negotiated grievance procedure (if applicable).

d. Performance-based actions maybe taken using the procedures specified in this section, or the procedures specified in the Unacceptable Performance subchapter of reference (a).

e. Grievances and Appeals. The Labor/Employee Relations Specialist will represent the activity in grievance and appeal proceedings.

10. Past Offenses. Any past offense may form the basis for proposing a remedy from the next higher range of remedies for a subsequent offense. The offenses need not be identical or similar. In considering the remedy, the following limitations must be observed:

a. Oral and written admonishments may not be counted as prior offenses in determining a remedy;

b. A letter of reprimand may be counted as a prior offense provided it is dated no more than two years before the date of the proposed notice of adverse action in which it is cited;

c. Reductions in grade or pay taken for nondisciplinary reasons may not be counted as prior offenses in determining a remedy; and,

d. In using past offenses in determining a connective action, the notice of proposed adverse action should cite specifically the past offense in sufficient detail to allow the employee to respond. Past offenses may only be counted if the employee was disciplined in writing, the employee had the right to dispute the action to a higher level and the action was made a matter of record in the OPF.

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11. Records. An official case file is maintained by the HRO (PSA Code N01PM maintains a file as well) for all disciplinary actions. Records will include the proposed action notice, an employee's written answer (if any), a written summary of an employee's oral reply (if any), the written decision notice, and the Notification of Personnel Action (SF-50) effecting the decision.

12. Action. When the need arises to correct an employee's behavioral problems or violation of command policies and/or rules of the workplace, Officers in Charge/Staff Department Heads will contact Code N01PM (Civilian Personnel Assistant) at 532-2726 or DSN 522-2726 for guidance and/or referral to Employee Relations Department, Human Resources Department, Fleet and Industrial Supply Center, San Diego.



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Distribution:

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